

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

MARK COLSTON,

Plaintiff,

v.

GABRIEL CRAMER,

Defendant.

CASE NO. 07-CV-12726

DISTRICT JUDGE THOMAS LUDINGTON
MAGISTRATE JUDGE CHARLES BINDER

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

I. RECOMMENDATION

For the reasons set forth below, **IT IS RECOMMENDED** that this case be *sua sponte* **DISMISSED WITH PREJUDICE** because it is duplicative of case number 06-CV-14842, which was dismissed with prejudice on June 7, 2007.

II. REPORT

A. Introduction

Plaintiff Mark Colston is a state prisoner who is currently incarcerated by the Michigan Department of Corrections ("MDOC") at its Hiawatha Correctional Facility in Kincheloe, Michigan. On June 26, 2007, Plaintiff filed this *pro se* civil rights action against Gabriel Cramer, a former corrections officer.¹ The case was originally assigned to United States District Judge Robert H. Cleland, Plaintiff's application to proceed without prepayment of fees was granted pursuant to the *in forma pauperis* statute, 28 U.S.C. § 1915(a)(1), and service on

¹I note that this is the fourth case Plaintiff has filed against Gabriel Cramer. (*See* E.D. Mich. case nos. 06-CV-14842, 07-CV-11061, and 07-CV-12221 (dismissed as duplicative of 07-CV-11061).)

Defendant Cramer was ordered. To date, Defendant Cramer has not filed an answer, and a Clerk's Entry of Default was docketed on March 18, 2008.

On March 24, 2008, the case was reassigned to United States District Judge Thomas L. Ludington as a possible companion case to 06-CV-14842. On April 7, 2008, all pretrial matters were referred to the undersigned magistrate judge. After reviewing the complaint in accordance with the Court's duty under 28 U.S.C. § 1915(e)(2), a Report and Recommendation is warranted.

B. Discussion

In this case, Plaintiff alleges that in March and April of 2005, Defendant Gabriel Cramer, who was a corrections officer at the facility where Plaintiff had previously been housed, mailed him "some letters and a money order with the intended purpose of Correctional Officials at Hiawatha Correctional Officials [sic] intercepting them and using them to label him a problem to security." (Compl. ¶ 3.)

Plaintiff, however, has already filed a civil rights action against the same defendant involving the same allegations of unconstitutional conduct, which was dismissed with prejudice on June 7, 2007. *See Colston v. Cramer*, Case No. 06-CV-14842. Accordingly, I suggest that the instant action must be dismissed as duplicative. A suit is duplicative, and therefore subject to dismissal, if the claims, parties, and available relief do not significantly differ between the two actions. *See, e.g., Barapind v. Reno*, 72 F. Supp. 2d 1132, 1145 (E.D. Cal. 1999). The instant action is duplicative of Plaintiff's prior civil rights action where he likewise alleged that Defendant Cramer sent him letters and a money order in March 2005 with the intended purpose that corrections officials intercept them and label him a threat to security. (Case No. 06-CV-14842, Compl. ¶¶ 2, 8.) Thus, because Plaintiff is suing the same Defendant and raising

similar claims in both cases, it is recommended that the Court dismiss this second case as duplicative.

III. REVIEW

The parties to this action may object to and seek review of this Report and Recommendation within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed.2d 435 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

s/ Charles E Binder

CHARLES E. BINDER
United States Magistrate Judge

Dated: April 15, 2008

CERTIFICATION

I hereby certify that this Report and Recommendation was electronically filed this date, served on Mark Colston, #230362, at Hiawatha Correctional Facility, 4533 W. Industrial Park Dr., Kincheloe, MI, 49786-1638, by first class mail, and served on District Judge Ludington in the traditional manner.

Date: April 15, 2008

By s/Jean L. Broucek
Case Manager to Magistrate Judge Binder